

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MILES T. LEE,) Civil Action No.: 6:06-cv-2165-RBH
)
Petitioner,)
)
v.) **ORDER**
)
DIRECTOR PHIL FOOT,)
GARY KUBIC, BEAUFORT)
COUNTY JAIL,)
)
Respondents.)
)

This matter arises as a result of this *pro se* Petitioner's challenge to his detainment in the Beaufort County Detention Center. Pending before the Court are: 1) Petitioner's [Docket Entry #2] Motion for Discovery; 2) [Docket Entry #6] Report and Recommendation; 3) Petitioner's [Docket Entry #8] Motion to Amend; and 4) Petitioner's [Docket Entry #10] Objection to Report and Recommendation (entitled "Civil Law Response - Temporary Court Injunction").

Up to this point, this case has been dealt with as a 28 U.S.C. § 2241 action. The Magistrate Judge issued a Report and Recommendation on August 28, 2006, recommending that the case be dismissed without prejudice and without issuance and service of process upon the Respondents. However, having reviewed the Report and Recommendation, objections, pleadings, and applicable law, it appears that the Petitioner never intended to file a habeas corpus action, even though Petitioner's initial filing clearly states "Writ of Habeas Corpus" below the caption.

It appears from the Petitioner's [Docket Entry #8] Motion to Amend, filed on

September 6, 2006, that Petitioner intended to institute a civil rights action against the Respondents. In Petitioner's Motion to Amend he alleges that the defendants all acted under "the color of law." Petitioner then requests that the current habeas action be converted to a civil lawsuit against all of the defendants now listed. In Petitioner's objections, entitled "Civil Law Response - Temporary Court Injunction," he states that "when Petitioner was mailing documents to Honorable Reginald Lloyd is [sic] was for evidence to be used in a Civil Lawsuit so there was some misunderstanding on both parties." Objection, at pg. 1 [Docket Entry #10]. Petitioner's objections further detail Petitioner's misunderstanding regarding the nature of the action he actually brought (§ 2241) and the nature of the action he intended to bring (§ 1983).

Therefore, this Court will construe Petitioner's [Docket Entry #8] Motion to Amend as a Motion to Dismiss the current § 2241 action. As such, Petitioner's Motion to Dismiss the current § 2241 action is hereby **GRANTED**. However, in the event Petitioner did not intend to pursue a § 1983 action, for the reasons stated by the Magistrate Judge, the Court overrules the Petitioner's objections and adopts and incorporates by reference the Magistrate Judge's Report and Recommendation. Accordingly, Petitioner's § 2241 action is hereby **DISMISSED WITHOUT PREJUDICE**. All pending motions are rendered **MOOT**. If Petitioner still wishes to bring a civil rights action against the Respondents under 42 U.S.C. § 1983, he must initiate a new civil action with a new civil case number assigned.

IT IS SO ORDERED.

Florence, South Carolina
March 22, 2007

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

